

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

RICKEY J. CARMAN and  
DACHELLE CARMAN,  
husband and wife,

Plaintiffs,

v.

Civil Action No. 5:08CV148  
(STAMP)

BAYER CORPORATION,  
an Indiana corporation,  
BAYER MATERIAL SCIENCE, LLC,  
a Delaware corporation,  
DAVID JOHNSTON, individually,  
JOHN COOL, individually,  
TERRY EDDY, individually,  
CHARLES "BUDDY" KOTSON,  
individually and  
JOHN LONG, individually,

Defendants.

**MEMORANDUM OPINION AND ORDER**  
**DENYING WITHOUT PREJUDICE DEFENDANTS'**  
**MOTION FOR SUMMARY JUDGMENT DISMISSING**  
**PLAINTIFFS' CLAIMS (DOC. 143) AS PREMATURE AND**  
**DENYING WITHOUT PREJUDICE DEFENDANTS' MOTION FOR**  
**SUMMARY JUDGMENT DISMISSING PLAINTIFFS'**  
**CLAIMS (DOC. 144) AS PREMATURE**

On March 9, 2009, this Court entered an agreed order modifying the scheduling order to extend the deadline for dispositive motions, and ordering that all dispositive motions shall be filed by March 29, 2010. Thereafter, the plaintiffs filed a motion for continuance of the trial in this matter. Before that motion was acted upon by this Court, however, the defendants filed two separate motions for summary judgment (Doc. Nos. 143 and 144).

On April 30 2010, this Court held a status and scheduling conference at the parties' request to discuss the plaintiffs'

motion to continue the trial. At that time, this Court granted the plaintiffs' motion and entered an amended scheduling order, in which discovery is to be completed by June 22, 2010, and dispositive motions shall be filed by July 6, 2010.

This Court believes, and case law suggests, that the parties are entitled to conduct discovery regarding any potential issues of material fact before responding to a summary judgment motion. The Supreme Court has found that summary judgment is appropriate only when "no serious claim can be made that [the nonmovant] was in any sense 'railroaded' by a premature motion for summary judgment." Celotex Corp. v. Catrett, 477 U.S. 317, 326 (1986).

This Court finds that the plaintiffs should be given "the opportunity to discover information that is essential to [their] opposition." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). Accordingly, the defendants' motions for summary judgment are hereby DENIED WITHOUT PREJUDICE as premature, subject to refiling after the parties have completed discovery in this action.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to counsel of record herein.

DATED: April 30, 2010

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE